

106TH CONGRESS  
1ST SESSION

# S. 1565

To license America's Private Investment Companies and provide enhanced credit to stimulate private investment in low-income communities, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 5, 1999

Mr. SARBANES (for himself, Mr. EDWARDS, Mr. BAYH, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To license America's Private Investment Companies and provide enhanced credit to stimulate private investment in low-income communities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “America's Private In-  
5 vestment Companies Act”.

### 6 **SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSES.**

7 (a) CONGRESSIONAL FINDINGS.—Congress makes  
8 the following findings:



1           (1) People living in distressed areas, both urban  
2           and rural, characterized by high levels of joblessness,  
3           poverty, and low incomes continue to miss out on  
4           the economic expansion experienced by the Nation as  
5           a whole.

6           (2) Unequal access to economic opportunities  
7           continues to make the social costs of joblessness and  
8           poverty to our Nation very high.

9           (3) There are significant untapped markets in  
10          our Nation, and many of these are in areas that are  
11          underserved by institutions that can make equity  
12          and credit investments.

13       (b) PURPOSE.—The purposes of this Act are to:

14           (1) license private for profit community devel-  
15           opment entities that will focus on making equity and  
16           credit investments for large-scale business develop-  
17           ments that benefit low-income communities;

18           (2) provide credit enhancement for those enti-  
19           ties for use in low-income communities; and

20           (3) provide a vehicle under which the economic  
21           and social returns on financial investments made  
22           pursuant to this Act may be available both to the in-  
23           vestors in these entities and to the residents of the  
24           low-income communities.



1 **SEC. 3. DEFINITIONS.**

2 As used in this Act, certain terms have the respective  
3 meanings set forth herein:

4 (1) “Agency” is an entity as defined in section  
5 551(1) of title 5, United States Code.

6 (2) “APIC” means an America’s Private In-  
7 vestment Company, a business entity that has been  
8 licensed under the terms of this Act, and the license  
9 of which has not been revoked.

10 (3) “Administrator” means the Administrator  
11 of the Small Business Administration.

12 (4) “Community development entities” are enti-  
13 ties whose primary mission must be serving or pro-  
14 viding investment capital for low-income commu-  
15 nities or low-income persons, maintain accountability  
16 to residents of low-income communities, and have 60  
17 percent of their aggregate gross assets invested in  
18 low-income community investments or residential  
19 property located in low-income communities.

20 (5) “Cost” has the meaning set forth in section  
21 502(5) of the Federal Credit Reform Act of 1990.

22 (6) “Debentures” means debt instruments the  
23 terms of any of which may be specified by the Sec-  
24 retary.

25 (7) “HUD” means the Secretary of Housing  
26 and Urban Development or the Department of



1       Housing and Urban Development, as the context re-  
2       quires.

3           (8) “Low-income communities” are census  
4       tracts with either (1) poverty rates of at least 20  
5       percent, based on the most recent census data; or  
6       (2) median family income that does not exceed 80  
7       percent of the greater of (A) metropolitan area me-  
8       dian family income or (B) statewide median family  
9       income.

10          (9) “Qualified low-income community invest-  
11       ments” means equity investments in, or loans to,  
12       qualified active businesses located in low-income  
13       communities.

14          (10) “Qualified active business” means a busi-  
15       ness or trade—

16               (A) at least 50 percent of the gross income  
17               of which is derived from conduct of trade or  
18               business activities in low-income communities;

19               (B) a substantial portion of the use of the  
20               tangible property of which is used within low-  
21               income communities;

22               (C) a substantial portion of the services  
23               that the employees of which perform are per-  
24               formed in low-income communities;



1 (D) less than 5 percent of the aggregate  
2 unadjusted bases of the property of which is at-  
3 tributable to certain financial property, as the  
4 Secretary shall set forth in regulations, or in  
5 collectibles, other than collectibles held pri-  
6 marily for sale to customers.

7 (11) “Secretary” means the Secretary of Hous-  
8 ing and Urban Development, unless otherwise speci-  
9 fied in this Act.

10 **SEC. 4. AUTHORIZATION.**

11 (a) LICENSES.—The Secretary is authorized to li-  
12 cense America’s Private Investment Companies, in accord-  
13 ance with the terms of this Act.

14 (b) REGULATIONS.—The Secretary is authorized to  
15 regulate APICs for compliance with sound financial man-  
16 agement practices, and the program and procedural goals  
17 of this and other related Acts, and other purposes as re-  
18 quired or authorized by this Act, or determined by the  
19 Secretary. The Secretary may issue regulations, Federal  
20 Register notices, and other guidance or directives to carry  
21 out licensing and regulatory and other duties under this  
22 Act.

23 (c) USE OF CREDIT SUBSIDY FOR LICENSES.—

24 (1) NUMBER OF LICENSES.—The Secretary is  
25 authorized to have outstanding at any one time the



1        number of licenses for APICs that may be supported  
2        by the amount of the budget authority appropriated  
3        in accordance with the Federal Credit Reform Act of  
4        1990 for the subsidy cost and the investment strate-  
5        gies of such APICs.

6            (2) USE OF CREDIT SUBSIDY AFTER INITIAL  
7        APPROPRIATION TO HUD.—With respect to any ap-  
8        propriation of budget authority for the credit costs  
9        after the initial appropriation, the Secretary may li-  
10       cense additional APICs, or as hereinafter provided,  
11       increase the credit subsidy allocated to an APIC as  
12       an award for high performance under this Act.

13        (d) COOPERATION AND COORDINATION.—

14            (1) PROGRAM POLICIES.—The Secretary is au-  
15        thorized to coordinate and cooperate, through memo-  
16        randa of understanding, an APIC liaison committee,  
17        or otherwise, with the Administrator, the Secretary  
18        of the Treasury, and other agencies in the discretion  
19        of the Secretary, on implementation of this Act, in-  
20        cluding regulation, examination, and monitoring of  
21        APICs under this Act.

22            (2) OPERATIONS.—The Secretary may carry  
23        out this Act—



1 (A) directly, through agreements with  
 2 other Federal entities under section 1535 of  
 3 title 31, United States Code, or otherwise, or

4 (B) indirectly, under contracts or agree-  
 5 ments, as the Secretary shall determine.

6 (e) FEES AND CHARGES FOR ADMINISTRATIVE  
 7 COSTS.—To the extent provided in appropriations Acts,  
 8 the Secretary is authorized to impose fees and charges for  
 9 application, review, licensing, and regulation, or other ac-  
 10 tions under this Act, and to pay for the costs of such ac-  
 11 tivities from the fees and charges collected.

12 (f) GUARANTEE FEES.—The Secretary is authorized  
 13 to set and collect fees for loan guarantee commitments and  
 14 loan guarantees that the Secretary makes under this Act.

15 (g) FUNDING.—

16 (1) AUTHORIZATION FOR APPROPRIATION OF  
 17 COST OF ANNUAL LOAN GUARANTEE COMMIT-  
 18 MENT.—For each of fiscal years 2000, 2001, 2002,  
 19 and 2003, there is authorized to be appropriated up  
 20 to \$36,000,000 for the cost of annual loan guar-  
 21 antee commitments under this Act. The Secretary  
 22 may make commitments to guarantee loans only to  
 23 the extent that the total loan principal, any part of  
 24 which is guaranteed, will not exceed \$1,000,000,000,  
 25 or the amount specified in appropriations Acts in



1       each such fiscal year. Amounts appropriated under  
2       this paragraph shall remain available for 5 years.

3           (2) AUTHORIZATION FOR APPROPRIATION OF  
4       ADMINISTRATIVE EXPENSES.—For each of the fiscal  
5       years 2000, 2001, 2002, and 2003, there is author-  
6       ized to be appropriated \$1,000,000 for administra-  
7       tive expenses for carrying out this Act. The Sec-  
8       retary may transfer amounts appropriated under  
9       this paragraph to any appropriation account of  
10      HUD or another agency, to carry out the program  
11      under this Act. Any agency to which the Secretary  
12      may transfer amounts under this Act is authorized  
13      to accept such transferred amounts in any appro-  
14      priation account of such agency.

15   **SEC. 5. SELECTION OF APIC'S.**

16       (a) NOTICE OF COMPETITIONS.—The Secretary shall  
17      select APICs for licensing on the basis of competitions.  
18      Such competitions shall be announced by a Federal Reg-  
19      ister notice that invites applications for APIC licenses.  
20      Each such notice shall set forth application requirements,  
21      and such other terms of the competition not otherwise pro-  
22      vided for, as determined by the Secretary.

23       (b) LICENSEE SELECTION CRITERIA.—The Secretary  
24      shall select among applicants for licenses on the basis of  
25      the extent to which an applicant may be expected to



1 achieve the goals of the Act by satisfying the requirements  
2 set forth in this subsection—

3 (1) The applicant shall be a private for profit  
4 entity that qualifies as a community development en-  
5 tity for the purposes of New Markets Tax Credits.

6 (2) The entity must, as of the time that the li-  
7 cense is approved, have reasonably available to it, as  
8 determined by the Secretary, a minimum of  
9 \$25,000,000 in equity capital, as determined by the  
10 Secretary.

11 (3) The entity must demonstrate that its man-  
12 agers are qualified, and have the knowledge, experi-  
13 ence, and capability necessary to raise large amounts  
14 of capital and make investments for community eco-  
15 nomic development in distressed areas.

16 (4) The entity must demonstrate that, as a  
17 matter of sound financial management practices, it  
18 is structured to preclude financial conflict of interest  
19 between the APIC and a manager or investor.

20 (5) The entity must prepare and submit an in-  
21 vestment strategy that includes benchmarks for eval-  
22 uation of its progress.

23 (6) The entity must prepare and submit a  
24 statement of public purpose goals. The statement  
25 shall include elements specified by the Secretary, in-



1 including proposed measurements and strategies for  
2 meeting the goals. The goals shall promote commu-  
3 nity and economic development, and include at  
4 least—

5 (A) making investments that are qualified  
6 investments in low-income communities;

7 (B) creation of jobs that pay decent wages  
8 in low-income communities and for residents of  
9 such areas; and

10 (C) involvement of community-based orga-  
11 nizations and residents in community develop-  
12 ment activities.

13 (7) The entity must demonstrate a capacity to  
14 cooperate with States or units of general local gov-  
15 ernment and with community-based organizations  
16 and residents of low-income communities.

17 (8) The entity must agree to comply with appli-  
18 cable laws, including Federal executive orders, Office  
19 of Management and Budget circulars, and Treasury  
20 requirements, and such operating and regulatory re-  
21 quirements as the Secretary may impose from time  
22 to time.

23 (9) The entity must satisfy other application re-  
24 quirements that the Secretary may impose by regu-  
25 lation or Federal Register notice.



1       (c) COMMUNICATIONS BETWEEN HUD AND APPLI-  
2 CANTS DURING SELECTION PROCESS.—

3           (1) The Secretary shall set forth in regulations  
4 the procedures under which HUD, on the one hand,  
5 and applicants for APIC licenses, and others, on the  
6 other hand, may communicate. Such regulations  
7 shall—

8           (A) specify by position the HUD officers  
9 and employees who may communicate with such  
10 applicants and others;

11          (B) permit such officers and employees to  
12 request and discuss with the applicant and oth-  
13 ers (such as banks or other credit or business  
14 references, or potential investors, that the appli-  
15 cant specifies in writing) any more detailed in-  
16 formation that may be desirable to facilitate  
17 HUD's review of the applicant's application;

18          (C) restrict such officers and employees  
19 from revealing to any applicant—

20           (i) the fact or chances of award of a  
21 license to such applicant, unless there has  
22 been a public announcement of the results  
23 of the competition; and

24           (ii) any information with respect to  
25 any other applicant; and



1 (D) set forth requirements for making and  
 2 keeping records of any communications con-  
 3 ducted under this subsection, including require-  
 4 ments for making such records available to the  
 5 public after the award of licenses under an ini-  
 6 tial or subsequent notice, as appropriate, under  
 7 subsection (a).

8 (2) Regulations under this subsection may be  
 9 issued as interim rules for effect on or before the  
 10 date of publication of the first notice under sub-  
 11 section (a), and shall apply only with respect to ap-  
 12 plications under such notice. Regulations to imple-  
 13 ment this subsection with respect to any notice after  
 14 the first such notice shall be subject to notice and  
 15 comment rulemaking.

16 (3) Section 12(e)(2) of the Department of  
 17 Housing and Urban Development Act is amended by  
 18 inserting before the period at the end a comma and  
 19 “or any license provided under the America’s Private  
 20 Investment Companies Act”.

21 **SEC. 6. OPERATIONS OF APIC’S.**

22 (a) IN GENERAL.—

23 (1) An APIC shall have any powers or  
 24 authorities—



1 (A) that the APIC derives from the juris-  
2 diction in which it is organized, or that the  
3 APIC otherwise has;

4 (B) as may be conferred by a license under  
5 this Act; and

6 (C) as the Secretary may prescribe by reg-  
7 ulation.

8 (2) Nothing in this Act shall preclude an APIC  
9 or its investors from receiving an allocation of New  
10 Market Tax Credits if the APIC satisfies the appli-  
11 cable terms and conditions under the Internal Rev-  
12 enue Code of 1986.

13 (b) INVESTMENT LIMITATIONS.—

14 (1) QUALIFIED LOW-INCOME COMMUNITY IN-  
15 VESTMENTS.—Substantially all investments that an  
16 APIC makes must be qualified low-income commu-  
17 nity investments if the investments are financed  
18 with—

19 (A) amounts available from the proceeds of  
20 the issuance of an APIC's debenture guaran-  
21 teed under this Act;

22 (B) proceeds of the sale of obligations de-  
23 scribed under subsection (c)(3)(C)(iii); or



1 (C) the use of equity capital, as deter-  
 2 mined by the Secretary, in an amount specified  
 3 in the APIC's license.

4 (2) INVESTMENT LIMIT.—An APIC shall not,  
 5 as a matter of sound financial practice, invest in any  
 6 one business, an amount that exceeds an amount  
 7 equal to 35 percent of the sum of—

8 (A) the APIC's equity capital, plus

9 (B) an amount equal to the percentage  
 10 limit that the Secretary determines that APIC  
 11 may have outstanding at any one time, under  
 12 subsection (c)(2)(A).

13 (c) BORROWING POWERS—DEBENTURES.—

14 (1) ISSUING.—An APIC may issue debentures  
 15 that the Secretary may guarantee under the terms  
 16 of this Act.

17 (2) LEVERAGE LIMITS.—In general, as a mat-  
 18 ter of sound financial management practices—

19 (A) the total amount of debentures that an  
 20 APIC issues under this Act that an APIC may  
 21 have outstanding at any one time shall not ex-  
 22 ceed an amount equal to 200 percent of the eq-  
 23 uity capital of the APIC, as determined by the  
 24 Secretary: *Provided*, That the Secretary may by  
 25 regulation increase the foregoing percentage to



1 up to 300 percent for all APICs, or any reason-  
2 able class of APICs; and

3 (B) an APIC must not have more than  
4 \$300,000,000 in face value of debentures issued  
5 under this Act outstanding at any one time.

6 (3) REPAYMENT.—

7 (A) An APIC must have repaid, or have  
8 otherwise been relieved of indebtedness, with re-  
9 spect to any interest or principal amounts of  
10 borrowings under this subsection no less than 2  
11 years before the APIC may dissolve or other-  
12 wise complete the wind-up of its business.

13 (B) An APIC may repay any interest or  
14 principal amounts of borrowings under this sub-  
15 section at any time: *Provided*, That the repay-  
16 ment of such amounts shall not relieve an APIC  
17 of any duty otherwise applicable to the APIC  
18 under this Act, unless the Secretary orders such  
19 relief.

20 (C) Until an APIC has repaid all interest  
21 and principal amounts on APIC borrowings  
22 under this subsection, an APIC may use the  
23 proceeds of investments in accordance with reg-  
24 ulations issued by the Secretary only to—



1 (i) pay for proper costs and expenses  
2 the APIC incurs in connection with such  
3 investments;

4 (ii) pay for the reasonable administra-  
5 tive expenses of the APIC;

6 (iii) purchase Treasury securities;

7 (iv) repay interest and principal  
8 amounts on APIC borrowings under this  
9 subsection;

10 (v) make interest, dividend, or other  
11 distributions to or on behalf of an investor;

12 or

13 (vi) undertake such other purposes as  
14 the Secretary may approve.

15 (D) After an APIC has repaid all interest  
16 and principal amounts on APIC borrowings  
17 under this subsection, and subject to continuing  
18 compliance with subsection (a), the APIC may  
19 use the proceeds from investments to make in-  
20 terest, dividend, or other distributions to or on  
21 behalf of investors in the nature of returns on  
22 capital, or the withdrawal of equity capital,  
23 without regard to subparagraph (C) but in con-  
24 formity with the APIC's investment strategy  
25 and statement of public purpose goals.



1       (d) REUSE OF DEBENTURE PROCEEDS.—An APIC  
 2 may use the proceeds of sale of Treasury securities pur-  
 3 chased under subsection (c)(3)(C)(iii) to make qualified  
 4 low-income community investments, subject to the Sec-  
 5 retary’s approval. In making the request for the Sec-  
 6 retary’s approval, the APIC shall follow the procedures ap-  
 7 plicable to an APIC’s request for HUD guarantee action,  
 8 as the Secretary may modify such procedures for imple-  
 9 mentation of this subsection. Such procedures shall never-  
 10 theless include the description and certifications that an  
 11 APIC must include in all requests for guarantee action,  
 12 and the environmental certification applicable to initial ex-  
 13 penditures for a project or activity.

14       (e) ANTIPIRATING.—Notwithstanding any other pro-  
 15 vision of law, an APIC may not use any equity capital  
 16 required to be contributed under this Act, or the proceeds  
 17 from the sale of any debenture under this Act, to make  
 18 an investment, as determined by the Secretary, to assist  
 19 directly in the relocation of any industrial or commercial  
 20 plant, facility, or operation, from 1 area to another area,  
 21 if the relocation is likely to result in a significant loss of  
 22 employment in the labor market area from which the relo-  
 23 cation occurs.

24       (f) BANKRUPTCY RESTRICTION—EXCLUSION OF  
 25 APIC FROM DEFINITION OF DEBTOR.—Section



1 109(b)(2) of title 11 of the United States Code is amended  
 2 by inserting before “credit union” the following: “Amer-  
 3 ica’s Private Investment Companies licensed by the De-  
 4 partment of Housing and Urban Development under the  
 5 America’s Private Investment Companies Act,”.

6 **SEC. 7. CREDIT ENHANCEMENT BY THE FEDERAL GOVERN-**  
 7 **MENT.**

8 (a) ISSUANCE AND GUARANTEE OF DEBENTURES.—  
 9 Consistent with the Federal Credit Reform Act of 1990,  
 10 the Secretary is authorized to make commitments to guar-  
 11 antee and guarantee the timely payment of all principal  
 12 and interest as scheduled on, debentures issued by APICs.  
 13 Such commitments or guarantees may be made by the  
 14 Secretary on such terms and conditions, including but not  
 15 limited to amounts, expirations, number, priorities of re-  
 16 payment, security, collateral, amortization, payment of in-  
 17 terest (including the timing thereof), and fees and charges,  
 18 as the Secretary determines to be appropriate, in docu-  
 19 ments that the Secretary approves for any commitment  
 20 or guarantee, or pursuant to regulations issued by the Sec-  
 21 retary. Debentures guaranteed by the Secretary under this  
 22 subsection shall be senior to any debt obligation, equity  
 23 contribution or earnings, or the distribution of dividends,  
 24 interest, or other amounts of an APIC, notwithstanding  
 25 any Federal or other law. Debentures may be issued for



1 a term of not to exceed 21 years and shall bear interest  
 2 during all or any part of that time period at a rate or  
 3 rates approved by the Secretary. The debentures shall also  
 4 contain such other terms as the Secretary may fix.

5 (b) ISSUANCE OF TRUST CERTIFICATES.—The Sec-  
 6 retary, or an agent or entity selected by the Secretary,  
 7 is authorized to issue trust certificates representing own-  
 8 ership of all or a fractional part of guaranteed debentures  
 9 issued by APICs and held in trust.

10 (c) GUARANTEE OF TRUST CERTIFICATES.—

11 (1) IN GENERAL.—The Secretary is authorized,  
 12 upon such terms and conditions as the Secretary de-  
 13 termines to be appropriate, to guarantee the timely  
 14 payment of the principal of and interest on trust  
 15 certificates issued by the Secretary, or an agent or  
 16 other entity, for purposes of this section. Such guar-  
 17 antee shall be limited to the extent of principal and  
 18 interest on the guaranteed debentures which com-  
 19 pose the trust.

20 (2) SUBSTITUTION OPTION.—The Secretary  
 21 shall have the option to replace in the corpus of the  
 22 trust any prepaid or defaulted debenture with a de-  
 23 benture, another full faith and credit instrument, or  
 24 any obligations of the United States, that may rea-



1       sonably substitute for such prepaid or defaulted de-  
2       benture.

3           (3) PROPORTIONATE REDUCTION OPTION.—In  
4       the event that the Secretary elects not to exercise  
5       the option under paragraph (2), and a debenture in  
6       such trust is prepaid, or in the event of default of  
7       a debenture, the guarantee of timely payment of  
8       principal and interest on the trust certificate shall be  
9       reduced in proportion to the amount of principal and  
10      interest that such prepaid debenture represents in  
11      the trust. Interest on prepaid or defaulted debentures  
12      shall accrue and be guaranteed by the Secretary  
13      only through the date of payment of the guarantee.  
14      During the term of a trust certificate, it may  
15      be called for redemption due to prepayment or default  
16      of all debentures that are in the corpus of the  
17      trust.

18      (d) FULL FAITH AND CREDIT BACKING OF GUARANTEES.—The full faith and credit of the United States is  
19      pledged to the timely payment of all amounts which may  
20      be required to be paid under any guarantee by the Secretary  
21      pursuant to this section.  
22      retary pursuant to this section.

23      (e) SUBROGATION AND LIENS.—

24           (1) In the event the Secretary pays a claim  
25      under a guarantee issued under this section, the



1 Secretary shall be subrogated fully to the rights sat-  
2 isfied by such payment.

3 (2) No State or local law, and no Federal law,  
4 shall preclude or limit the exercise by the Secretary  
5 of its ownership rights in the debentures in the cor-  
6 pus of a trust under this section.

7 (f) REGISTRATION.—

8 (1) The Secretary shall provide for a central  
9 registration of all trust certificates issued pursuant  
10 to this section.

11 (2) The Secretary may contract with an agent  
12 or agents to carry out on behalf of the Secretary the  
13 pooling and the central registrations functions of  
14 this section notwithstanding any other provisions of  
15 law, including maintenance on behalf of and under  
16 the direction of the Secretary, such commercial bank  
17 accounts or investments in obligations of the United  
18 States as may be necessary to facilitate trusts  
19 backed by debentures guaranteed under this Act and  
20 the issuance of trust certificates to facilitate forma-  
21 tion of the corpus of the trusts. The Secretary may  
22 require such agent or agents to provide a fidelity  
23 bond or insurance in such amounts as the Secretary  
24 determines to be necessary to protect the interests  
25 of the Government.



1           (3) Book-entry or other electronic forms of reg-  
 2           istration for trust certificates under this Act are au-  
 3           thorized.

4           (g) TIMING OF ISSUANCE OF GUARANTEES OF DE-  
 5           BENTURES AND TRUST CERTIFICATES.—The Secretary  
 6           may, from time to time in the Secretary’s discretion, exer-  
 7           cise the authority to issue guarantees of debentures under  
 8           this Act or trust certificates under this Act.

9           **SEC. 8. APIC REQUESTS FOR GUARANTEE ACTIONS.**

10          (a) ALL APIC REQUESTS FOR HUD GUARANTEE  
 11          ACTION.—An APIC may request that the Secretary guar-  
 12          antee a debenture that the APIC intends to issue, in ac-  
 13          cordance with the Secretary’s regulations. All such re-  
 14          quests shall include a description of the manner in which  
 15          the APIC intends to use the proceeds from such deben-  
 16          ture. All such requests shall also include certification by  
 17          the APIC that the APIC is in substantial compliance  
 18          with—

- 19               (1) this Act and other applicable laws;
- 20               (2) all terms and conditions of its license, and
- 21               of any penalty or condition that may have arisen
- 22               from examination or monitoring by the Secretary or
- 23               otherwise, including the satisfaction of any financial
- 24               audit exception that may have been outstanding;



1           (3) all requirements relating to the allocation  
2           and use of New Markets Tax Credits; and

3           (4) any other requirements that the Secretary  
4           may specify under regulations.

5           (b) REQUESTS FOR GUARANTEE OF DEBENTURES  
6 THAT WOULD INCLUDE FUNDING FOR INITIAL EXPENDI-  
7 TURE FOR A PROJECT OR ACTIVITY.—In addition to the  
8 description and certification that an APIC is required to  
9 supply in all requests for guarantee action under sub-  
10 section (a), in the case of an APIC's request for a guar-  
11 antee that includes a debenture, the proceeds of which the  
12 APIC expects to be used as its initial expenditure for a  
13 project or activity in which the APIC intends to invest,  
14 and the expenditure for which would require an environ-  
15 mental assessment under the National Environmental Pol-  
16 icy Act of 1969 and other related laws that further the  
17 purposes of such Act, such request for guarantee action  
18 must include evidence satisfactory to the Secretary of the  
19 certification of the completion of environmental review of  
20 the project or activity required of the cognizant State or  
21 local government under subsection (c). If the environ-  
22 mental review responsibility for the project or activity has  
23 not been assumed by a State or local government under  
24 subsection (c), then the Secretary is responsible for car-  
25 rying out the applicable responsibilities under the National



1 Environmental Policy Act of 1969 and other provisions  
 2 of law that further the purposes of such Act that relate  
 3 to the project or activity, and the Secretary must execute  
 4 such responsibilities before acting on the APIC's request  
 5 for the guarantee that is covered by this subsection.

6 (c) RESPONSIBILITY FOR ENVIRONMENTAL RE-  
 7 VIEWS.—

8 (1) EXECUTION OF RESPONSIBILITY BY THE  
 9 SECRETARY.—This subsection shall apply to guaran-  
 10 tees by the Secretary of debentures under this Act,  
 11 the proceeds of which would be used in connection  
 12 with qualified low-income community investments of  
 13 APICs under this Act.

14 (2) ASSUMPTION OF RESPONSIBILITY BY COG-  
 15 NIZANT UNIT OF GENERAL GOVERNMENT.—

16 (A) GUARANTEE OF DEBENTURES.—In  
 17 order to assure that the policies of the National  
 18 Environmental Policy Act of 1969 and other  
 19 provisions of law that further the purposes of  
 20 such Act (as specified in regulations issued by  
 21 the Secretary) are most effectively implemented  
 22 in connection with the expenditure of funds  
 23 under this Act, and to assure to the public  
 24 undiminished protection of the environment, the  
 25 Secretary may, under such regulations, in lieu



1 of the environmental protection procedures oth-  
2 erwise applicable, provide for the guarantee of  
3 debentures, any part of the proceeds of which  
4 are to fund particular qualified low-income com-  
5 munity investments of APICs under this Act, if  
6 a State or unit of general local government, as  
7 designated by the Secretary in accordance with  
8 regulations issued by the Secretary, assumes all  
9 of the responsibilities for environmental review,  
10 decisionmaking, and action pursuant to the Na-  
11 tional Environmental Policy Act of 1969 and  
12 such other provisions of law that further such  
13 Act as the regulations of the Secretary specify,  
14 that would otherwise apply to the Secretary  
15 were the Secretary to undertake the funding of  
16 such investments as a Federal action.

17 (B) IMPLEMENTATION.—The Secretary  
18 shall issue regulations to carry out this sub-  
19 section only after consultation with the Council  
20 on Environmental Quality. Such regulations  
21 shall—

22 (i) specify any other provisions of law  
23 which further the purposes of the National  
24 Environmental Policy Act of 1969 and to



which the assumption of responsibility as provided in this subsection applies;

(ii) provide eligibility criteria and procedures for the designation of a State or unit of general local government to assume all of the responsibilities in this subsection;

(iii) specify the purposes for which funds may be committed without regard to the procedure established under paragraph (3);

(iv) provide for monitoring of the performance of environmental reviews under this subsection;

(v) in the discretion of the Secretary, provide for the provision or facilitation of training for such performance; and

(vi) subject to the discretion of the Secretary, provide for suspension or termination by the Secretary of the assumption under subparagraph (A).

(C) RESPONSIBILITIES OF STATES AND UNITS OF GENERAL LOCAL GOVERNMENT.—The Secretary's duty under subparagraph (B) shall not be construed to limit any responsibility assumed by a State or unit of general local gov-



1           ernment with respect to any particular request  
2           for guarantee under subparagraph (A), or the  
3           use of funds for a qualified investment.

4           (3) PROCEDURE.—The Secretary shall approve  
5           the request for guarantee of a debenture, any part  
6           of the proceeds of which is to fund particular quali-  
7           fied low-income community investments of APICs  
8           under this Act, that is subject to the procedures au-  
9           thorized by this subsection only if, not less than 15  
10          days prior to such approval and prior to any com-  
11          mitment of funds to such investment (except for  
12          such purposes specified in the regulations issued  
13          under paragraph (2)(B)), the APIC submits to the  
14          Secretary a request for guarantee of a debenture  
15          that is accompanied by evidence of a certification of  
16          the State or unit of general local government which  
17          meets the requirements of paragraph (4). The ap-  
18          proval by the Secretary of any such certification  
19          shall be deemed to satisfy the Secretary's respon-  
20          sibilities pursuant to paragraph (1) under the Na-  
21          tional Environmental Policy Act of 1969 and such  
22          other provisions of law as the regulations of the Sec-  
23          retary specify insofar as those responsibilities relate  
24          to the guarantees of debentures, any parts of the



1       proceeds of which are to fund such investments,  
2       which are covered by such certification.

3           (4) CERTIFICATION.—A certification under the  
4       procedures authorized by this subsection shall—

5           (A) be in a form acceptable to the Sec-  
6       retary;

7           (B) be executed by the chief executive offi-  
8       cer or other officer of the State or unit of gen-  
9       eral local government who qualifies under regu-  
10      lations of the Secretary;

11          (C) specify that the State or unit of gen-  
12      eral local government under this subsection has  
13      fully carried out its responsibilities as described  
14      under paragraph (2); and

15          (D) specify that the certifying officer—

16           (i) consents to assume the status of a  
17      responsible Federal official under the Na-  
18      tional Environmental Policy Act of 1969  
19      and each provision of law specified in regu-  
20      lations issued by the Secretary insofar as  
21      the provisions of such Act or other such  
22      provision of law apply pursuant to para-  
23      graph (2); and

24           (ii) is authorized and consents on be-  
25      half of the State or unit of general local



1 government and himself or herself to ac-  
2 cept the jurisdiction of the Federal courts  
3 for the purpose of enforcement of the re-  
4 sponsibilities of such an official.

5 **SEC. 9. EXAMINATION AND MONITORING OF APIC'S.**

6 (a) IN GENERAL.—The Secretary shall, under regula-  
7 tions, through audits, performance agreements, license  
8 conditions, or otherwise, examine and monitor the oper-  
9 ations and activities of APICs for compliance with sound  
10 financial management practices, and for satisfaction of the  
11 program and procedural goals of this Act and other re-  
12 lated Acts. The Secretary may undertake any responsi-  
13 bility under this section in cooperation with an APIC liai-  
14 son committee, or any agency that is a member of such  
15 a committee, or other agency.

16 (b) MONITORING, UPDATING, AND PROGRAM RE-  
17 VIEW.—

18 (1) REPORTING AND UPDATING.—The Sec-  
19 retary may establish such annual or more frequent  
20 reporting requirements for APICs, and such require-  
21 ments for independent audits, and the updating of  
22 the statement of public purpose goals, investment  
23 strategy (including the benchmarks in such strat-  
24 egy), and other documents that may have been used  
25 in the license application process under this Act, as



1 the Secretary determines necessary to assist the Sec-  
2 retary in monitoring the compliance and perform-  
3 ance of APICs.

4 (2) EXAMINATIONS.—The Secretary shall, no  
5 less often than once every 2 years, examine the oper-  
6 ations and portfolio of each APIC licensed under  
7 this Act for compliance with sound financial man-  
8 agement practices, and for compliance with this Act.

9 (3) EXAMINATION STANDARDS.—

10 (A) SOUND FINANCIAL MANAGEMENT  
11 PRACTICES.—The Secretary shall examine each  
12 APIC to ensure, as a matter of sound financial  
13 management practices, substantial compliance  
14 with this and other applicable laws, including  
15 Federal executive orders, Department of Treas-  
16 ury and Office of Management and Budget  
17 guidance, circulars, and application and licens-  
18 ing requirements on a continuing basis. The  
19 Secretary may set any additional sound finan-  
20 cial management practices standards by regula-  
21 tion, including standards that address solvency  
22 and financial exposure.

23 (B) PERFORMANCE AND OTHER EXAMINA-  
24 TIONS.—The Secretary shall monitor each  
25 APIC's progress in meeting the goals in the



1 APIC's statement of public purpose goals, exe-  
 2 cuting the APIC's investment strategy, and  
 3 other matters.

4 **SEC. 10. INCENTIVES AND PENALTIES.**

5 (a) INCENTIVES.—From amounts of budget authority  
 6 appropriated after the initial appropriation for the cost of  
 7 annual loan guarantee commitments under this Act, the  
 8 Secretary may increase the credit subsidy allocated to an  
 9 APIC, in the Secretary's discretion, as an award for high  
 10 performance of the APIC in carrying out its investment  
 11 strategy and statement of public purpose goals.

12 (b) PENALTIES.—

13 (1) IN GENERAL.—The Secretary may penalize  
 14 any APIC, or any manager of an APIC, in the event  
 15 such APIC or a manager of the APIC commits an  
 16 act of fraud, mismanagement, or noncompliance with  
 17 this Act or regulations thereunder or a condition of  
 18 the APIC's license under this Act. The Secretary in  
 19 regulations shall identify, by generic description of a  
 20 role or responsibilities, any manager of an APIC  
 21 that is subject to this subsection.

22 (2) PENALTIES REQUIRING NOTICE AND HEAR-  
 23 ING.—With respect to an act of commission or omis-  
 24 sion under paragraph (1) for which the Secretary  
 25 may penalize an APIC or a manager, the Secretary



1 may, following notice in writing to the APIC or the  
2 manager, and opportunity for administrative  
3 hearing—

4 (A) assess a civil money penalty against an  
5 APIC, or a manager of an APIC, the amount  
6 of which may exceed \$10,000;

7 (B) require an APIC to divest any interest  
8 in an investment, on such terms and conditions  
9 as the Secretary imposes; or

10 (C) revoke the APIC's license.

11 (3) PENALTIES REQUIRING NOTICE AND AN OP-  
12 PORTUNITY TO RESPOND.—With respect to any act  
13 of commission or omission under paragraph (1) for  
14 which the Secretary may penalize an APIC or a  
15 manager, following notice in writing and an oppor-  
16 tunity for the APIC or manager to respond, impose  
17 any reasonable penalty. Such a penalty may, in addi-  
18 tion to any others, be—

19 (A) a civil money penalty of \$10,000 or  
20 less;

21 (B) the suspension of an APIC's license, or  
22 the conditioning of the use of an APIC's li-  
23 cense, for up to 90 days, including the deferral  
24 for the period of the suspension of a commit-



1           ment to guarantee any new debenture of the  
2           APIC; or

3           (C) any other penalty that the Secretary  
4           determines to be less burdensome to the APIC  
5           than a penalty that requires notice and an ad-  
6           ministrative hearing under this Act.

7       (c) PROCEDURES.—

8           (1) No award under this section shall be made  
9           until notice thereof is published in the Federal Reg-  
10          ister.

11          (2) No civil money penalty, or other penalty  
12          under subsection (b), except suspension or condi-  
13          tioning of an APIC's license under subsection  
14          (b)(3)(B), shall be due and payable, or otherwise  
15          take effect, or be subject to enforcement by an order  
16          of a court, until notice thereof is published in the  
17          Federal Register.

18          (3)(A) The Secretary may suspend or condition  
19          an APIC's license for up to 45 days without prior  
20          notice in the Federal Register, but such suspension  
21          or conditioning shall take effect only after the Sec-  
22          retary has issued a written notice (including a writ-  
23          ing in electronic form) of such action to the APIC.  
24          Such written notice shall be effective without regard  
25          to whether the APIC has been accorded the oppor-



1       tunity to respond. Such suspension or conditioning  
2       shall be subject to enforcement by an order of a  
3       court when the Secretary has issued such written  
4       notice.

5               (B) After such suspension or conditioning takes  
6       effect, the Secretary shall promptly cause a notice of  
7       suspension or conditioning of such license for up to  
8       90 days to be published in the Federal Register. The  
9       APIC shall be entitled to respond to such notice. In  
10      counting the time period of the suspension or condi-  
11      tioning, the first day shall be the day that written  
12      notice under this paragraph is issued.

13              (C) During the time period of such suspension  
14      or conditioning, the Secretary may proceed under  
15      subsection (b)(2), and in accordance with the proce-  
16      dures applicable to such subsection, to revoke the  
17      APIC's license. Only if the Secretary so proceeds,  
18      notwithstanding any other provision of this section,  
19      the Secretary may extend the suspension or condi-  
20      tioning of the APIC's license by publishing a notice  
21      of such action in the Federal Register—

22                      (i) for the first such extension, before the  
23                      up to 90 days under subparagraph (B) expires;  
24                      and



1                   (ii) for any subsequent extensions of up to  
2                   90 days, before the preceding period of up to  
3                   90 days expires.

4                   (D) The suspension or conditioning of an  
5                   APIC's license by the Secretary under this para-  
6                   graph shall remain in effect in accordance with its  
7                   terms until final adjudication in any litigation un-  
8                   dertaken to challenge such suspension or condi-  
9                   tioning, or revocation, of an APIC's license.

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